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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/882,511
Filing Date: June 15, 2001
Appellant(s): GONZALEZ-RIVAS, CARLOS G.

Leslie S. Miller, Reg. No. 30,662
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/05/2008 appealing from the Office action mailed 12/07/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

"Bacardi Brings Out the Bottle in Cable-TV Ad for Amaretto – Spot Is Firm's First to

Blatantly Display Product" O'Connell 05-2001

"Job-Hunting Web Sites' Ads Will Duel at Super Bowl" Silverman et al. 01-2001

Official Notice

Monster.com printout from Internet Archive WayBack Machine 04-2001

US2003/0036944 A1 Lesandrini et al. 02-2003

(9) Grounds of Rejection

Claim Rejections - 35 USC § 112

The second paragraph of 35 U.S.C. 112 is directed to requirements for the claims:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

There are two separate requirements set forth in this paragraph:

(A) the claims must set forth the subject matter that applicants regard as their invention; and

(B) the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant.

Claim 7 is rejected under 35 U.S.C. 112 second paragraph. Claim 7 teaches a method wherein a marketing website logo is printed on printed material provided to consumers. Additionally, the claim recites, "displaying, simultaneously with said step of displaying a list of television networks, a readily recognizable logo or other indicia that identifies said type of printed material." This limitation is unclear. Specifically, it is unclear how a logo itself identifies the type of printed material. A logo can be placed on a printed publication and on a website simultaneously, but the logo itself is not identifying the type of printed material. It is interpreted that the Applicant is trying to claim a limitation that a printed material is printed with a logo and that logo is also displayed on a website. Additionally, claim 7 depends on claim 6, and claim recites a logo whereas claim 7 recites a marketing website logo. Therefore, there is insufficient antecedent basis for this limitation in claim 7, since a marketing website logo was not previously recited. It is interpreted to mean that the claims are referring to a logo and that a marketing website logo is the same thing as a logo. Clarification is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 8-11, are rejected under U.S.C. 103(a) as being unpatentable over the article titled "Bacardi Brings Out the Bottle in Cable-TV Ad for Amaretto --- Spot Is Firm's First to Blatantly Display Product," by Vanessa O'Connell that was published in the Wall Street Journal on May 2, 2001 on Page 25 (hereinafter O'Connell) in view of the article titled "Job-Hunting Web Sites' Ads Will Duel at Super Bowl," by Rachel Emma Silverman and Suzanne Vranica that was published in the Wall Street Journal on January 23, 2001 on Page B.8 (hereinafter Silverman), and further in view of Official Notice.

In reference to claims 1 and 11, O'Connell teaches a method of increasing consumer awareness of products or services which are advertised in television commercials, comprising: enhancing a plurality of television commercials by displaying a marketing website logo during each of said plurality of enhanced television commercials (page 1 lines 8-11 and page 2 lines 21-24) and providing a marketing website which is associated with and identified by said marketing website logo and which is accessible by consumers (page 1 lines 8-11 and page 2 lines 21-24).

O'Connell is silent about providing a game or contest for the consumer to play which game or contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial. Silverman

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teaches providing a game or contest for the consumer to play which game or contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial. (page 2 lines 16-21). It would have been obvious to modify O'Connell to provide a game for the consumer to play that relates to the product or service advertised by the television commercial to make the consumer stay on the website by making it more interactive and interesting and to use it as opportunity to remind the consumer once again about the product being sold.

O'Connell is also silent about displaying to a consumer who has entered said marketing website in response to viewing a particular enhanced television commercial a list of television networks on which enhanced television commercials have aired, and prompting the consumer to select the particular television network on which the consumer viewed the particular enhanced television commercial; displaying to the consumer a list of television shows broadcasted by the particular television network during which television shows enhanced television commercials have been broadcasted, and prompting the consumer to select the particular television show during which the consumer viewed the particular enhanced television commercial; displaying to the consumer a list of enhanced television commercials which were broadcasted during the particular television show, and prompting the consumer to select the particular enhanced television commercial. In reference to claims 1 and 11, Official Notice is taken that it is old and well known to ask consumers how they reached the sponsor's website or store location and where and which commercial did the consumer see that referred the consumer to the sponsor's website or store location to help the sponsor determine what type of advertising is reaching its target audience and where the sponsor should invest future advertising dollars. For example, when a user visits a

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Management Property, he is asked to fill out an informational card telling the Property Management staff who referred the user to the property and which advertising sources did the user utilize to find this community. Another example is a recruiting company that also asks job candidates through what medium did they hear about the firm and if someone referred them to the company both in person during an interview and online when the user fills out a questionnaire and posts his resume. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, the use of questions on the sponsor's website where the user makes a response selection by placing a cursor on of a mouse on a desired location and clicking on that location with the mouse to make the choice selection to obtain information from the consumer to assist the sponsor in determining where to best spend his advertising dollars to reach his target audience and to determine what sources are being utilized by the target audience to reach the sponsor.

In reference to claim 2, O'Connell teaches a method of placing said marketing website logo in a prominent position (i.e. visible to the user on the television screen) during at least a portion of each of said television commercials (page 1 lines 8-11 and page 2 lines 21-24).

In reference to claim 3, O'Connell teaches a method wherein said marketing website logo comprises: the URL address of said marketing website (page 1 lines 8-11 and page 2 lines 21-24); and a stylized logo which contains said URL address of said marketing address.


In reference to claims 6 and 8-10, O'Connell does not teach a method wherein said step of displaying a list of television networks comprises: displaying a readily recognizable logo for each of said television networks on which at least one enhanced

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television commercial has aired and displaying a separate information element associated with each broadcasted commercial. In reference to claims 6 and 8-10, Official Notice is taken that it is old and well known to display a list of television networks comprising: displaying a readily recognizable logo and the name of the television show and station for each of said television networks on which at least one enhanced television program has aired will air as done by television guide stations that list the program name, time, and show the logo and name of the station on which the program will air, to enable the customer to quickly and visually locate a channel by the logo instead of having to read the channel numbers (see attached image below showing this information from the Klosterman Patent Number 5,940,073 in support of the Official Notice). It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, the use of questions on the sponsor's website and to include logos of television stations, names of television stations, and names of the programs being aired in those questions to obtain information from the consumer to assist the sponsor in determining where to best spend his advertising dollars to reach his target audience and to determine what sources are being utilized by the target audience to reach the sponsor and to enable the consumer to quickly view a list of television stations and shows by their logos and program name as done on a television guide station.

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S T A R S I G H T							
OCT	WED	THU	FRI	SAT	SUN	MON	TUE
30	8:00P			8:30P			
NBC	Monday Night, November 4th						
	Heats Up with BACKDRAFT!						
KGO	Beverly Hills 90210						
SHOW	Jury Duty						
HBO	Mask of Death						
DISN	Wolves of Willoughby Chase						
ESPN	Baseball						
FAM	The Waltons			Highway to Heaven			
KRON	Dateline						
KPIX	Ellen			Drew Carey			

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8:05P

8:05P

Disclaimer: Claim 7 was found to be deficient under U.S.C. 112 second paragraph. To the extent the claimed invention was understood, the following art was applied.

Claims 4, 5, and 7 are rejected under U.S.C. 103(a) as being unpatentable over O'Connell in view of Silverman, further in view of the printouts from Monster.com from the Internet Archive WayBack Machine from April 18, 2001 (see attached pages hereinafter Monster.com), and further in view of Official Notice.

In reference to claims 4, 5, and 7, O'Connell does not teach a method additionally comprising: enhancing printed materials, including print advertisements, which are transmitted to consumers by printing said marketing website logo thereupon. Monster.com teaches a method additionally comprising: enhancing printed materials which are transmitted to consumers by printing said marketing website logo thereupon (page 1, reference 1). It would have been obvious to modify O'Connell to enhance printed materials which are transmitted to consumers by printing said marketing website

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logo thereupon to use it as opportunity to remind the consumer once again about the brand name of the company.

O'Connell also does not teach display, simultaneously with said step of displaying a list of television networks, a readily recognizable logo or other indicia that was also presented on printed materials. Monster.com teaches a method additionally comprising: enhancing printed materials which are transmitted to consumers by printing said marketing website logo thereupon (page 1, reference 1). It would have been obvious to modify O'Connell to enhance printed materials which are transmitted to consumers by printing said marketing website logo thereupon to use it as opportunity to remind the consumer once again about the brand name of the company. Official Notice is taken that it is old and well known to provide readily recognizable logo at the same time a list of television networks is displayed as done in the diagram supra from the Klosterman patent to help increase brand awareness. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention the use of a readily recognizable logo at the same time a list of television is displayed to the uses to encourage the users to become familiar with associating a channel number with the image of the station's logo. Official Notice is also taken that it is old and well known to present the same logo on a television network display list also on printed materials as done by cable broadcasting companies that are trying to promote a network that is offered by the broadcasting company in form of a flyer that is sent to user's home with that network's logo on it as well as the display of that network's logo on the channel preview channel. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention the use same logo on the television network as the one on printed

materials regarding Bacardi to enable the users to recognize the Bacardi brand easily by the use of the logo in both instances.

Claims 12-26 are rejected under U.S.C. 103(a) as being unpatentable over O'Connell in view of Silverman, further in view of Lesandrini et al. Publication Number US 2003/0036944 A1 (hereinafter Lesandrini), and further in view of Official Notice.

In reference to claims 12 and 13, O'Connell does not teach a method for obtaining demographic and other consumer information such as age and gender. Lesandrini teaches obtaining demographic information and age and gender information (page 4 paragraphs 100 and 101 and Figure 8A). It would have been obvious to modify O'Connell to include obtaining demographic and age and gender information from the consumer to collect this information for the advertisers so that they could find out targeted information regarding who is viewing their advertisements and learn about their audience for future marketing efforts.

In reference to claims 14 and 15, O'Connell does not teach a method requiring each consumer who accesses the marketing website to register by providing an e-mail address and a zip code. Lesandrini teaches requiring each consumer who accesses the marketing website to register by providing an e-mail address and a zip code (page 4 paragraphs 0100 and 0101 and Figure 8B). It would have been obvious to modify O'Connell to include requiring each consumer who accesses the marketing website to register by providing an e-mail address and a zip code so that advertisers can use this information to send consumers discount coupons and so that advertisers can track by geography where most of their consumers are located.

In reference to claim 16, O'Connell does not teach a method wherein said requiring step comprises: determining whether the consumer has previously registered;

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if the consumer has previously registered, requiring the consumer to log in; and if the consumer has not previously registered, requiring the consumer to register. Lesandrini teaches determining whether the consumer has previously registered (page 4 paragraphs 0100 and 0101, page 9 paragraphs 0221 and 0222, and Figures 7 and 12); if the consumer has previously registered, requiring the consumer to log in (page 4 paragraphs 0100 and 0101, page 9 paragraphs 0221 and 0222, and Figures 7 and 12); and if the consumer has not previously registered, requiring the consumer to register (page 4 paragraphs 0100 and 0101, page 9 paragraphs 0221 and 0222, and Figures 7, 8A, 8B, and 12). It would have been obvious to modify O'Connell to include requiring each consumer who accesses the marketing website to register and to log in with the registration so that advertisers can track by user id which advertisements are of most interest to the which users.

In reference to claim 17, O'Connell does not teach a method wherein said providing step comprises: providing to the consumer the game or contest related to the particular product or service advertised by the particular enhanced television commercial; and upon completion of the game or contest related to the particular product or service advertised by the particular enhanced television commercial, providing to the consumer the consumer's score or standing. Silverman teaches providing a game or contest for the consumer to play which game or contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial. (page 2 lines 16-21). It would have been obvious to modify O'Connell to provide a game for the consumer to play that relates to the product or service advertised by the television commercial to make the consumer stay on the

website by making it more interactive and interesting and to use it as opportunity to remind the consumer once again about the product being sold.

O'Connell is also silent about providing to a consumer upon completion of the game the consumer's score or standing. In reference to claim 17, Official Notice is taken that it is old and well known to provide a person with his score at the end of playing a game and to show the individual how he did in comparison to others who have played a given game. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, providing users with a game and a score in that game to motivate the user to perform well in the game in order to receive a high score.

In reference to claims 18 and 19, O'Connell does not teach a method wherein said providing step additionally comprises: providing to the consumer the option to be notified of the final game or contest results and allowing the consumer to select the option to receive the notification by e-mail. In reference to claim 18, Official Notice is taken that it is old and well known to provide the consumer with the option to be notified of the final game results and allowing the consumer to select that option as done by online sweepstakes for example to have the results e-mailed to the consumer after the sweepstakes is over. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, providing users with the option to be notified of the final game results via e-mail and allowing the consumer to select that option to enable the consumers to find out if he was a winner in real time by having the consumer access his e-mail account and to avoid making the consumer check about the results of the game on his own.

In reference to claims 20 and 21, O'Connell does not teach a method, wherein

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said providing step comprises: displaying to the consumer a plurality of additional games or contests which can be played; prompting the consumer to select at least one additional game or contest to be played; upon selection by the consumer of such additional game(s) or contest(s) to be played, providing to the consumer the game or contest related service advertised television commercial or not providing the game when the consumer declines to do so; to the particular product or by the particular enhanced and following completion of the game or contest related to the particular product or service advertised by the particular enhanced television commercial, providing to the additional game(s) or contests selected. Lesandrini teaches a method, wherein said providing step comprises: displaying to the consumer a plurality of additional games or contests which can be played (page 6 paragraphs 0137 and 0138 and Figure 12); prompting the consumer to select at least one additional game or contest to be played (Figure 12); upon selection by the consumer of such additional game(s) or contest(s) to be played, providing to the consumer the game or contest related service advertised television commercial or not providing the game when the consumer declines to do so (page 6 paragraphs 0137 and 0138 and Figure 12); and following completion of the game or contest related to the particular product or service advertised by the particular enhanced television commercial, providing to the additional game(s) or contests selected (page 6 paragraphs 0137 and 0138 and Figure 12). It would have been obvious to modify O'Connell to include multiple games to the consumers to keep the consumer interested in the product and to make the consumer stay at the product website longer.

In reference to claim 22, O'Connell does not teach a method further comprising:

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delivering a coupon to the consumer following the completion of at least one of the additional games, wherein said coupon may be printed by said consumer. Lesandrini teaches giving rewards to the consumers after completing games (page 5 paragraphs 0114 and 0115), however Lesandrini does not specifically teach giving coupons to the consumers. It would have been obvious to modify O'Connell to include giving rewards to consumers for completing games to motivate the consumers to stay engaged and to stay on the product website longer in anticipation of being rewarded for the consumer's conduct of playing games online. In reference to claim 22, Official Notice is taken that it is old and well known to provide the consumer with incentives such as coupons to motivate the consumer to purchase a specific product. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, providing coupons as incentives for playing games to encourage the consumer to go out and buy that product within a certain time frame.

In reference to claim 23, O'Connell does not teach a method wherein said game or contest comprises: a game or contest in which the consumer is required to provide information from the particular enhanced commercial, and the scoring for such game or contest is based upon the degree to which such information is correctly provided. In reference to claim 23, Official Notice is taken that it is old and well known to score a game or contest based on the customer's recital of accurate information regarding a commercial as done by radio stations during on the air trivia competitions to encourage the users to tune in constantly to listen to clues and to hear other advertisers. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, scoring a game or contest based on the customer's recital of accurate information regarding a commercial to motivate the user

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to view the commercial attentively and repeatedly to make sure the user captures the required information.

In reference to claim 24, O'Connell does not teach a method wherein by obtaining a sufficient score in said game or contest, the consumer is entered into a drawing for a prize. Lesandrini teaches entering consumers into a drawing for a prize (page 5 paragraph 0115); however, Lesandrini does not specifically teach the entry into the drawing after obtaining a specific score in a game or contest.

It would have been obvious to modify O'Connell to include entering customers into a drawing for a prize to motivate the users to come to the website to enter a drawing. In reference to claim 24, Official Notice is taken that it is old and well known to provide the consumer with an opportunity to enter a drawing after winning a contest as done by radio stations where once multiple users win a daily trivia, their names are entered into a grand prize drawing. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, the opportunity to enter a drawing for prizes after the consumers win and receive a certain score in a game online to motivate the user to play the game well and repeatedly and thereby visit the sponsor's website to get the opportunity to win lucrative prizes.

In reference to claim 25, O'Connell teaches a method of increasing consumer awareness of a product or service, which is advertised in a television commercial, comprising: displaying a marketing website logo during the television commercial (page 1 lines 8-11 and page 2 lines 21-24); providing a marketing website which is associated with and identified by said marketing website logo and which is accessible by consumers (page 1 lines 8-11 and page 2 lines 21-24).

O'Connell is silent about providing a game or contest for the consumer to play which game or contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial. Silverman teaches providing a game or contest for the consumer to play which game or contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial (page 2 lines 16-21). It would have been obvious to modify O'Connell to provide a game for the consumer to play that relates to the product or service advertised by the television commercial to make the consumer stay on the website by making it more interactive and interesting and to use it as opportunity to remind the consumer once again about the product being sold.

O'Connell is also silent about displaying to a consumer who has entered said marketing website in response to viewing a particular enhanced television commercial a list of television networks on which enhanced television commercials have aired, and prompting the consumer to select the particular television network on which the consumer viewed the particular enhanced television commercial; displaying to the consumer a list of television shows broadcasted by the particular television network during which television shows enhanced television commercials have been broadcasted, and prompting the consumer to select the particular television show during which the consumer viewed the particular enhanced television commercial; displaying to the consumer a list of enhanced television commercials which were broadcasted during the particular television show, and prompting the consumer to select the particular enhanced television commercial. In reference to claims 1 and 11, Official Notice is taken that it is old and well known to ask consumers how they reached the sponsor's website or store location and where and which commercial did the consumer see that

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referred the consumer to the sponsor's website or store location to help the sponsor determine what type of advertising is reaching its target audience and where the sponsor should invest future advertising dollars. For example, when a user visits a Management Property, he is asked to fill out an informational card telling the Property Management staff who referred the user to the property and which advertising sources did the user utilize to find this community. Another example is a recruiting company that also asks job candidates through what medium did they hear about the firm and if someone referred them to the company both in person during an interview and online when the user fills out a questionnaire and posts his resume. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, the use of questions on the sponsor's website where the user makes a response selection by placing a cursor on of a mouse on a desired location and clicking on that location with the mouse to make the choice selection to obtain information from the consumer to assist the sponsor in determining where to best spend his advertising dollars to reach his target audience and to determine what sources are being utilized by the target audience to reach the sponsor.

In reference to claim 26, O'Connell teaches a method of increasing consumer awareness of products or services which are advertised in television commercials, comprising: enhancing a plurality of television commercials by displaying a marketing website logo during each of said plurality of enhanced television commercials (page 1 lines 8-11 and page 2 lines 21-24); providing a marketing website which is associated with and identified by said marketing website logo and which is accessible by consumers (page 1 lines 8-11 and page 2 lines 21-24). O'Connell is silent about providing a game or contest for the consumer to play which game or

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contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial. Silverman teaches providing a game or contest for the consumer to play which game or contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial (page 2 lines 16-21). It would have been obvious to modify O'Connell to provide a game for the consumer to play that relates to the product or service advertised by the television commercial to make the consumer stay on the website by making it more interactive and interesting and to use it as opportunity to remind the consumer once again about the product being sold.

O'Connell is also silent about displaying to a consumer who has entered said marketing website in response to viewing a particular enhanced television commercial a list of television networks on which enhanced television commercials have aired, and prompting the consumer to select the particular television network on which the consumer viewed the particular enhanced television commercial; displaying to the consumer a list of television shows broadcasted by the particular television network during which television shows enhanced television commercials have been broadcasted, and prompting the consumer to select the particular television show during which the consumer viewed the particular enhanced television commercial; displaying to the consumer a list of enhanced television commercials which were broadcasted during the particular television show, and prompting the consumer to select the particular enhanced television commercial. In reference to claims 1 and 11, Official Notice is taken that it is old and well known to ask consumers how they reached the sponsor's website or store location and where and which commercial did the consumer see that referred the consumer to the sponsor's website or store location to help the sponsor

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determine what type of advertising is reaching its target audience and where the sponsor should invest future advertising dollars. For example, when a user visits a Management Property, he is asked to fill out an informational card telling the Property Management staff who referred the user to the property and which advertising sources did the user utilize to find this community. Another example is a recruiting company that also asks job candidates through what medium did they hear about the firm and if someone referred them to the company both in person during an interview and online when the user fills out a questionnaire and posts his resume. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, the use of questions on the sponsor's website where the user makes a response selection by placing a cursor on of a mouse on a desired location and clicking on that location with the mouse to make the choice selection to obtain information from the consumer to assist the sponsor in determining where to best spend his advertising dollars to reach his target audience and to determine what sources are being utilized by the target audience to reach the sponsor.

Claim 27 is rejected under U.S.C. 103(a) as being unpatentable over O'Connell in view of Silverman, further in view of Monster.com, and further in view of Official Notice.

In reference to claim 27, O'Connell teaches a method of enhancing the marketing of products or services which are advertised in television commercials, comprising: providing a marketing website which is associated with an indicia (i.e. logo) and which is accessible by consumers (page 1 lines 8-11 and page 2 lines 21-24); enhancing a plurality of television commercials by displaying said indicia which is associated with said marketing website during each of said plurality of enhanced television commercials

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(page 1 lines 8-11 and page 2 lines 21-24). O'Connell does not teach providing incentives to motivate consumers to enter said marketing website in response to viewing enhanced television commercials; and providing marketing information relating to the product advertised by the particular enhanced television commercial viewed by the consumer in a manner which is associated with said incentives; and displaying to a consumer who has entered said marketing website in response to viewing a particular enhanced television commercial a series of screens which prompt the consumer to select the particular enhanced television commercial viewed by the consumer.

Silverman teaches providing a game or contest for the consumer to play which game or contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial (page 2 lines 16-21) as an incentive to get a user to access a website. It would have been obvious to modify O'Connell to provide a game for the consumer to play that relates to the product or service advertised by the television commercial to make the consumer go and stay on the website by making it more interactive and interesting and to use it as opportunity to remind the consumer once again about the product being sold.

The Monster.com print outs teach providing marketing information relating to the product advertised by the particular enhanced television commercial viewed by the consumer in a manner which is associated with said incentives. It would have been obvious to modify O'Connell to provide marketing information relating to the product advertised in the television commercial on the website to satisfy the user's desire for more information and to provide an interactive experience for the user who is seeking this additional information.

In reference to claim 27, Official Notice is taken that it is old and well known to ask consumers using a series of screens how they reached the sponsor's website or store location and where and which commercial did the consumer see that referred the consumer to the sponsor's website or store location to help the sponsor determine what type of advertising is reaching its target audience and where the sponsor should invest future advertising dollars. For example, when a user visits a Management Property, he is asked to fill out an informational card telling the Property Management staff who referred the user to the property and which advertising sources did the user utilize to find this community. Another example is a recruiting company that also asks job candidates through what medium did they hear about the firm and if someone referred them to the company both in person during an interview and online when the user fills out a questionnaire and posts his resume. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, the use of questions on the sponsor's website where the user makes a response selection by placing a cursor on of a mouse on a desired location and clicking on that location with the mouse to make the choice selection to obtain information from the consumer to assist the sponsor in determining where to best spend his advertising dollars to reach his target audience and to determine what sources are being utilized by the target audience to reach the sponsor.

Claim 28 is rejected under U.S.C. 103(a) as being unpatentable over O'Connell in view of Monster.com, and further in view of Official Notice.

In reference to claim 28, O'Connell teaches 28 a method of marketing products or services, comprising: providing a marketing website having a particular web address (page 1 lines 8-11 and page 2 lines 21-24); broadcasting said web address in

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conjunction with each of a plurality of television commercials (page 1 lines 8-11 and page 2 lines 21-24). O'Connell does not teach first, allowing a consumer entering said marketing website to select the particular television network on which the consumer viewed a particular one of said plurality of television commercials; second, allowing the consumer to select the particular television show during which the consumer viewed said particular television commercial; third, allowing the consumer to select said particular television commercial; and fourth, providing marketing information relating to the product advertised by the particular enhanced television commercial in a manner which the consumer finds gratifying.

In reference to claim 28, Official Notice is taken that it is old and well known to ask consumers how they reached the sponsor's website or store location and where and which commercial did the consumer see that referred the consumer to the sponsor's website or store location to help the sponsor determine what type of advertising is reaching its target audience and where the sponsor should invest future advertising dollars. For example, when a user visits a Management Property, he is asked to fill out an informational card telling the Property Management staff who referred the user to the property and which advertising sources did the user utilize to find this community. Another example is a recruiting company that also asks job candidates through what medium did they hear about the firm and if someone referred them to the company both in person during an interview and online when the user fills out a questionnaire and posts his resume. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in O'Connell's invention, the use of questions on the sponsor's website where the user makes a response selection by placing a cursor on of a mouse on a desired location and clicking

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on that location with the mouse to make the choice selection to obtain information from the consumer to assist the sponsor in determining where to best spend his advertising dollars to reach his target audience and to determine what sources are being utilized by the target audience to reach the sponsor.

The Monster.com print outs teach providing marketing information relating to the product advertised by the particular enhanced television commercial in a manner, which the consumer finds gratifying. It would have been obvious to modify O'Connell to provide marketing information relating to the product advertised by the particular enhanced television commercial in a manner, which the consumer finds gratifying to satisfy the consumer's desire for more information and to provide an interactive and user friendly experience for the user who is seeking out this additional information.

(10) Response to Argument

Applicant's invention can be summarized as follows. Television commercials are enhanced by displaying a logo during the display of the commercial. A website associated with the logo is provided and made accessible to the consumers. When a user enters the website, he is presented with a list of networks and is asked to select the network on which he saw the advertisement. A game or contest related to a product or service advertised by the television commercial is also presented to the user.

In reference to claim 1 and the Applicant's invention in general, the Applicant does not claim that the game or contest is presented on a website. There is no mention that the user is requested to go to a website to view a game in the claim language. While asking the user where he saw an advertisement is done online on a website, there is no recitation in the claim that the providing of the game occurs on a website.

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Furthermore, there is no link between the game and the product commercial and it can't be said that consumer awareness of products or services is being increased, since providing a game has nothing to do with answering questions as claimed. Even if the game was being presented on a website, which has not been claimed by the Applicant, the Applicant claim implies that if a user makes any selection of where the user saw the advertisement, regardless of where the user actually saw the advertisement, the user will receive a game, so there is no motivation to even answer this question correctly by the user, since in any event the user will receive a game. Also, there is nothing in the claim that distinguishes which game a user is presented even if the game was presented on a website when a user selects one response versus another response. Additionally, just because the claim states that a television commercial is enhanced by displaying a marketing website logo during the enhanced television commercial, this does not exclude the presentation of the marketing website logo during the presentation of television programming other than when the commercials are displayed.

With regards to the Applicant's specific arguments, Applicant states that O'Connell does not indicate what content the Bacardi website may have had. While the Examiner agrees with the Applicant, the Examiner doesn't see this as a claim requirement that was claimed by the Applicant. Furthermore, the article directs the viewers to the website, and per the senior marketing manager at Bacardi, the idea of the ad was to get consumers to think of Bacardi as hip and cool, and lure them online. So, the website is enhancing the commercial by supplementing with additional marketing content about Bacardi regardless of the exact specificity the Applicant argues which is not described in the Bacardi article.

Applicant also argues in reference to claim 1 that Silverman does not mention the game being on a website. This has been addressed supra, since Applicant never claimed the game being on a website. So, the Applicant is arguing what he has not claimed.

Applicant further argues that the Monster.com reference bears the Monster.com logo, but it is not a printed material. The Examiner is unclear by what the Applicant means by the argument. Anything that can be printed is printed material. A website print out is printed material. A campus representative etc can print out the Monster.com website print out and hand it out to people to encourage them to visit the website, so this is printed material.

Applicant also argues that Lesandrini was cited by the Examiner to teach determining whether a consumer has previously registered which is apparently a reference to the member log in displayed in Figure 7. The Examiner agrees with the Applicant that this is indeed why Lesandrini was cited.

In reference to claim 1, Applicant argues that Silverman does not indicate that the game provides information on or relates to the particular product or service advertised by the enhanced television commercial. In reference to this, the Examiner respectfully disagrees with the Applicant. The commercial for Hotjobs has a silver click-click gravity balls that swings on a string rolls off an employee's desk...the ball joins a game of marbles...The ad suggests viewers can "control their own destinies and follow their own optimistic dream,"...tagline: "Onward. Upward (page 2 lines 16-19)." The video-game version of its commercials enables users to guide the runaway silver ball through a maze (page 2 lines 20-21). Therefore, the commercial and the game are

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related to each other. They both use a silver ball to represent how by using the services of Hotjobs.com users can control their destinies and move upward in their careers.

With respect to the Applicant's arguments that the Official Notice taken by the Examiner is invalid, the Examiner would like to point out to the Applicant has not presented arguments that the features are not well known. The Applicant's only argument has been, that the Examiner is relying on an invalid Official Notice, since three paragraphs containing two steps in each paragraph of claim 1 are not taught by any cited prior art. This does not constitute a proper challenge to the Official Notice. Per the Applicant's citing of MPEP 2144.03, "A seasonable challenge constitutes a demand for evidence be made as soon as practicable during prosecution. Thus the applicant is charged with rebutting the well known statement in the next reply after the Office Action in which the well known statement was made." The Applicant has not submitted any rebuttal of the well known statements, but has merely suggested that the use of Official Notice on more than half of a claim is invalid. In the paragraph in MPEP 2144.03 immediately preceding the above citing, reference is made to *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420-421 (CCPA 1970) that "Furthermore, the applicant must be given the opportunity to challenge the correctness of such assertions and allegations." Again, the Applicant has not challenged the correctness of the assertions but rather only the use of Official Notice itself. Bald statements such as "The use of "Official Notice" to show these six (6) steps without citing any reference to do so is both misplaced and completely erroneous...in violation of proper procedure...The Board cannot simply conclusions based on its own understnaind or experience – or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these

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findings...Since the rejection of Claim 1 on the merits relies upon such supportable Official Notice, this rejection is clearly improper, and must be withdrawn” are not adequate and do not shift the burden to the examiner to provide evidence in support of the Official Notice. Allowing such statements to challenge Official Notice would effectively destroy any incentive on part of the Examiner to use it in the process of establishing a rejection of notoriously well known facts (In re Boon, 169 USP 231 (CCPA 1971)). Even if the Applicant is not familiar with the two examples the Examiner previously provided to support the Official Notice that it is old and well known to ask consumers how they reached the sponsor’s website or store location and where and which commercial did the consumer see that referred the consumer to the sponsor’s website or store location to help the sponsor determine what type of advertising is reaching its target audience and where the sponsor should invest future advertising dollars. In advertising, there are many instances when people want to know who referred somebody so that they can compensate the person for the referral. For example, when a user visits a Management Property (i.e. either for renting an apartment or purchasing a condominium), he is asked to fill out an informational card telling the Property Management staff who referred the user to the property and which advertising sources did the user utilize to find this community (i.e. to compensate a real estate agent if necessary for the referral or to avoid paying a commission to an agent who did not help the customer reach the property but later wants to gain commission from the property owner or builder). Another example is a recruiting company that also asks job candidates through what medium did they hear about the firm and if someone referred them to the company both in person during an interview and online when the user fills out a questionnaire and posts his resume (i.e. to compensate the recruiting company

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who referred the candidate, or to find out which advertising mediums are the most effective in conveying job opportunity information to potential candidates). Another example of this is a referral information request that may ask the user where the user heard about the company by asking if the user heard about the company through a friend, online, or in a newspaper for example. So, the concept of asking somebody how they heard about a company is well known. Therefore, the Official Notice was taken for a well known feature, and it is maintained. Additionally, the Examiner would like to point out to the Applicant that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references (**O'Connell, Silverman, and Monster.com**). See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.1986). It is the combination of these references that addresses the claim limitations, and therefore, each reference will not teach all the limitations on its own. By restating that each of the references individually does not teach the features the Official Notice was taken for does not constitute a proper challenge to the Official Notice and as explained *supra* attacking each reference individually can't be used to show nonobviousness.

Examiner notes the Applicant's clarification regarding claim 4, and has removed the note accordingly for claim 4, since the clarification addresses the note.

With respect to claim 7, the Applicant argues that Figures 4 and 8 and paragraph 61 of his specification illustrate that the limitation regarding a logo identifying the type of printed material as being clear. The Examiner respectfully disagrees with the Applicant. Specifically, placing a logo on a printed material while may identify the source of the printed material (i.e. it is a communication from Comcast or Pepco), but it does not identify the type of the printed material (i.e. a letter with the Comcast or Pepco logo is

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not necessarily a bill, and it could be an advertisement for additional services being offered to the user). There is no link between how the logo identifies the type of document, since the logo is not unique to just being placed on an invoice for example. Furthermore, the logo on the invoice in Figure 4 of the Applicant's specification is actually the same logo on the website of Figure 8. Again, there is no specific and unique logo attached to an invoice that would identify to the recipient that this has to be an invoice and not some other printed material communication with a logo of the sender such as an advertisement or another offer for services.

With respect to claim 27, the Applicant argues that the Examiner relied upon the Monster.com reference to teach providing incentives to motivate customers to enter the marketing website in response to viewing enhanced television commercials. This statement is without merit, and it is simply incorrect. The Examiner relied upon the Silverman and not the Monster.com reference to teach this limitation. As stated previously by the Examiner, Silverman teaches providing a game or contest for the consumer to play which game or contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial (page 2 lines 16-21) as an incentive to get a user to access a website. It would have been obvious to modify O'Connell to provide a game for the consumer to play that relates to the product or service advertised by the television commercial to make the consumer go and stay on the website by making it more interactive and interesting and to use it as opportunity to remind the consumer once again about the product being sold.

With respect to claim 28, the Applicant argues that the Monster.com website reference does not teach providing an interactive and user friendly experience for the

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user. The Examiner respectfully disagrees, and would like to point the Applicant to the top and bottom portions of the one page reference where it is indicated that a user can take a tour of the site and can select the options for real-time recruiting and automatic ranking by clicking the various buttons. These are all examples of features of the Monster.com recruiting website that are interactive and useful to users.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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